



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Color Country District Office

Cedar City Field Office

176 East DL Sargent Drive

Cedar City, UT 84721

Telephone (435) 586-2401

www.blm.gov/ut/st/en/fo/cedar_city.html



RECEIVED

SEP 28 2009

DIV. OF OIL, GAS & MINING

In Reply Refer To:

UTC01

3809: UTU-74031

September 24, 2009

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

#7008 1300 0002 1744 4272 to Hurricane, UT address

NONCOMPLIANCE ORDER

Operator: Jeff Sagers
Terra Resources, LLC

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Notice: UTU-74031
Project Name: RMS #1

Failure to Perform Timely Reclamation

Notice, UTU-74031, was filed with this office on February 2, 1996. The Surface Management Regulations, 43 CFR 3809.333, require that an operator wishing to extend his/her notice which was on file as of January 20, 2001, notify the BLM in writing on or before the expiration date, January 20, 2003, and meet the financial guarantee requirements of 43 CFR 3809.503.

Your notice, UTU-74031, expired on January 20, 2003 since we did not receive written notification that you wish to extend your notice in accordance with 43 CFR 3809.333. All operations, except reclamation, are unauthorized. Your reclamation obligation continues beyond the expiration of your notice until such time as BLM determines that reclamation is satisfactorily completed. Failure to begin reclamation promptly or to conduct reclamation to BLM specified standards is subject to the enforcement actions specified in 43 CFR 3809.601 to 43 CFR 3809.701.

Through decision letter dated March 25, 2003, sent to you via certified mail and received on March 26, 2003, you were informed of these facts and directed to contact this office within 30 days of receipt of the letter to arrange a joint field inspection of your expired notice. The purpose of that joint inspection was to review the reclamation measures necessary to close out your expired notice. You failed to contact this office within the 30 day contact period.

Through noncompliance order dated May 8, 2003, sent to you via certified mail and received on May 16, 2003, you were directed to contact this office within 30 days of receipt of the letter and arrange a joint inspection of your unreclaimed disturbances on your expired notice and review the reclamation standards of your expired notice. You again failed to contact this office within the 30 day period allowed.

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On August 4, 2003, you were telephoned by Ed Ginouves of my staff in regard to the continuing noncompliance and agreed to meet on the RMS#1 site to resolve the noncompliance.

On August 12, 2003, you performed a joint inspection of the RMS#1 site with Mr. Ginouves and agreed to perform various reclamation measures on site disturbances to fulfill your regulatory responsibility to reclaim the site. You indicated at that time that the work would be carried out within several weeks.

On March 26, 2004, a site inspection was made and revealed that the site disturbances remained unchanged and no reclamation work had been carried out. The site was re-visited in 2006 and 2009 and remains unreclaimed to date. ***You are in noncompliance of performing timely reclamation (43 CFR 3809.420 (b)(3)(ii)) of the RMS#1. To resolve the noncompliance you must perform the required earthwork reclamation within 30 days of receipt of this letter.***

If you fail to timely comply with this noncompliance order, and remain in noncompliance, BLM will reclaim the site or contract to have the reclamation completed. Our estimate for completing the necessary work by 3rd party contractor is about \$5,000.00. If the work is carried out by either BLM or a contractor, you will be billed for the actual expense incurred in carrying out the reclamation. If the BLM is not promptly reimbursed, the bill will be turned over to BLM collections. Once in the billing process, interest and penalties accrue every 31 days.

If you wish to resume operations you may postpone reclamation if you file either a new notice pursuant to 43 CFR 3809.301 or a plan of operations pursuant to 43 CFR 3809.401 within 15 days from receipt of this order. The performance standards outlined in 43 CFR 3809.420 and the financial guarantee requirements outlined in 43 CFR 3809.500, et seq., applies to both notices and plans. The new notice must be accepted or the new plan of operations must be approved and a financial guarantee accepted prior to any additional earth disturbing activities occurring at this site. If the submitted new notice is not accepted or the new plan of operations is not approved or you do not timely post the appropriate financial guarantee as requested for either a notice or a plan of operations, you must begin reclamation within 30 days of BLM's decision finding that the new notice or plan of operations or financial guarantee is incomplete or unacceptable.

If you do not agree and are adversely affected by this order, in accordance with 43 CFR 3809.804, you may request that the Utah BLM State Director review this order. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this order. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this order will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this order within 21 days of BLM's receipt of the request, you should consider the request declined and you may appeal this order to the Interior Board of Land Appeals (IBLA). You may contact Utah BLM State Office to determine when BLM receives the request for State Director Review. You have 30 days from the end of the 21 day period in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass a State Director review, this order may be appealed directly to the IBLA in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (Cedar City FO, 176 East DL Sargent Drive, Cedar City, UT 84721) within 30 days from receipt of this order. The appellant has the burden of showing that the order appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this order during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the order and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Sincerely,



Randy M. Trujillo
Acting Field Office Manager

Enclosure: Appeals Form 1842-1

cc: Tom Munson, DOGM (S/021/024)